

Docket No. 0435.092A
U.S. Serial No. 10/799,818

REMARKS

Without acquiescing to the propriety of the rejections in the Office Action dated September 14, 2005, claims 1, 11 and 12 have been amended, claim 4 has been canceled, and new claims 21-23 have been added. Entry of these amendments, reconsideration of the application and allowance of all claims pending herein are respectfully requested in view of the remarks below. Claims 1-3 and 5-23 are now pending.

Claim Rejections Under § 103:

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being obvious over French reference No. 2706422 to Bertrand in view of Publication No. WO01/72601 to Noorby et al. and U.S. Patent No. 6,079,151 to Bishoff et al. Bertrand is alleged to disclose a pallet having an accessible component below the load-bearing deck for the purpose of tracking the pallet. Noorby et al. is alleged to disclose a package for keeping goods in a temperature decreased, preservative state and a temperature indicator. Bishoff et al. is alleged to disclose a method and apparatus for monitoring and controlling pests. It is alleged that it would have been obvious to modify Bertrand by providing a pest monitoring control housing to monitor pest infestation to goods on a pallet as taught by Noorby et al. and Bishoff et al.

Claim 1 of the present application recites a pallet which includes a load-bearing deck and bearer member for supporting the deck. One of the bearer members is located at a side of the deck and includes a cavity receiving a load-infestation monitoring device. The load-infestation monitoring device is located beneath the load-bearing deck and is accessible from the side of the pallet.

Bertrand discloses a pallet having an electronic chip stored in a central supporting block of a plurality of supporting blocks which support a load-bearing deck.

Noorby et al. discloses a package which is connected to a temperature indicator which alerts an observer when the temperature of the package varies from an intended temperature range.

Bishoff et al. discloses a method and apparatus for monitoring or controlling termites which includes a trap having a plurality of interchangeable housings, each of which has an interior chamber for holding a lure and/or trapping material, wherein the housings are detachably connectable to each other. The housings are particularly useful in above ground settings in homes, trees, near fences, and the like.

As noted, Bertrand discloses a pallet and a computer chip for storing data related to the contents of the pallet, but there is no disclosure or suggestion in this reference of the problem of pests related to such a pallet nor any means for monitoring pest infestation relative to a pallet. Further, Noorby et al. discloses a

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monitoring device relative to temperature, but there is no disclosure of a pallet nor a need to monitor pests relative to a pallet. Bishoff et al. discloses a termite trap, but this device is described for use adjacent wood structures to monitor and/or trap termites which may destroy such wood structures. In contrast, the pallet (e.g., formed of wood) of the present invention is not the subject of the pest monitoring and/or control, unlike the Bishoff et al. device which monitors and traps wood destroying pests. Instead, the control and/or monitoring of pests relative to the present invention relates to the load of a pallet and not the body of the pallet itself.

Thus, the problem sought to be solved (e.g., controlling and/or monitoring pests of a load received on a pallet) is not even acknowledged by any of the cited references. Instead, Bertrand discloses a pallet but does not mention pests, and focuses on storing information related to a load of the pallet. Noorby et al. relates to monitoring the temperature of a package but does not relate to pallets or pests. Bishoff et al. relates to pests but not of pests related to a load received on a pallet. In contrast, the load-infestation monitoring device of the present application relates to pests which may infest a load of a pallet. Thus, the cited references do not even address the problem recognized by the present application. Applicant's recognition of this problem is in itself strong evidence of non-obviousness of the claimed invention. In re Nomiya et al., 184 USPQ 607, 612-613 (CCPA 1975).

Further, relative to the allegations in the Office Action that it would be obvious to provide a recess in one of the bearer members accessible from an exposed end-face (see page 3) or side of the bearer member, as described on the bottom of page 5 and top of page 6 of Bertrand, the computer chip is located in a central block of a pallet to minimize shocks and blows which result from the handling of pallets by forklifts. Thus, this reference teaches away from placing a computer chip on an edge of a pallet where it could be damaged by forklift. Instead, this reference teaches storing an item (i.e., a computer chip) in a cavity in a central support block. Accordingly, from this reference, it would not be obvious to one of ordinary skill in the art to locate a load-infestation monitoring device in a cavity of a bearer member located at the side of a deck of a pallet, as recited in claim 1. Thus, it would not be obvious to modify the structure of Bertrand to create a cavity in a bearing member located at the side of a deck, nor would it be obvious to receive a load-infestation monitoring device therein from Bertrand or the combination of Bertrand with the other cited references.

Moreover, there would be no reason to combine the cited references. In particular, Bishoff et al. relates to wood destroying pests, but would not relate to the contents of a pallet. Further, a pallet may be made of materials other than wood which would make the Bishoff et al. device irrelevant even to the pallet itself. Moreover, neither Noorby et al., nor Bertrand, relate to pest monitoring or control and therefore there would be no reason to combine these references with the device in Bishoff et al. which does not even

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relate to the pests in question (i.e., pests relating to a load of a pallet). Instead, the proposed combination is mere hindsight recognition of the features recited in the claims of the present application. Such hindsight reconstruction of the invention of the present application is not proper. Accordingly, there is no disclosure, suggestion, or motivation to combine these references, and the cited claims can not be obvious over such references.

Even if the cited references were combined, the resultant combination would not satisfy the claims of the present application. As noted above, Bertrand discloses a computer chip located on a pallet which the Office Action alleges would be obvious to modify by providing a pest monitoring and control housing. However, the computer chip in Bertrand is located on a central support block of the pallet to minimize shocks and blows which result from the handling of pallets by forklifts. In contrast, the load-infestation monitoring device recited in claim 1 is located in a cavity in a bearer member which is located at a side of a load-bearing deck, i.e., not at a center block of a pallet. Further, claim 1 recites, *inter alia*, a load-infestation monitoring device which is not disclosed in any of the cited references. Instead, Bishoff et al. discloses a pest monitoring and control device, but such device is not designed for monitoring loads and instead includes lures for termites as opposed to those pests which might infest a load of a pallet. As described in the present application, pallets may be formed of a material other than wood which would make the use of the termite lures disclosed in Bishoff et al. useless even relative to the pallet supporting the load. Further, such termite lure would not attract pests likely to infest the loads of even wooden pallets. Thus, Bertrand does not disclose a bearer member located at a side of a deck and having a cavity for receiving a load-infestation monitoring device, and Bishoff et al. does not disclose such a load-infestation monitoring device. Accordingly, because the features of the present application (e.g., a load-infestation monitoring device located in a cavity of bearer member located on a side of a load-bearing deck of a pallet) of claim 1 of the present application are not disclosed, taught, or suggested by the cited references, nor their combination, this claim cannot be obvious over these references. Further, independent claims 11 and 12, along with the dependent claims, are believed not to be obvious for the same reasons and for their own additional features.

New Claims:

Claims 21-23 have been added. Support for these claims are found in at least paragraphs [0020] and [0045] of the present application. Thus, no new matter has been added. These claims are believed to be allowable for the same reasons as their base independent claims and for the additional feature of a load-infestation monitoring device having a transparent side to facilitate inspection of an interior thereof. Thus, these claims are believed to be allowable.

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CONCLUSION

It is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, the Examiner is invited to telephone the undersigned attorney at the telephone number provided.

Respectfully submitted,



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